

**TAMIL NADU ELECTRICITY REGULATORY COMMISSION**  
**(Constituted under section 82 (1) of the Electricity Act, 2003)**  
**(Central Act 36 of 2003)**

**PRESENT:**

Thiru M.Chandrasekar	.... Chairman
Dr.T.Prabhakara Rao	.... Member
and	
Thiru. K.Venkatasamy	.... Member (Legal)

**D.R.P. No.29 of 2013**

M/s.Angalakshmi Spinning Mills  
Rep. by the Partner  
Mathakadai Thottam  
S.F. No. 154/1  
Pallapalayam Post  
Irgur (via)  
Coimbatore – 641 103.

... Petitioner  
(Thiru S.Sivanandam  
Advocate for the Petitioner)

Vs

1. The Chairman  
Tamil Nadu Generation and Distribution  
Corporation Ltd.  
New No.14, (Old No.800), Anna Salai  
Chennai – 600 002.
2. The Chairman  
Tamil Nadu Transmission and Distribution  
Corporation Ltd.  
New No.14, (Old No.800), Anna Salai  
Chennai – 600 002.
3. The Superintending Engineer  
Tamil Nadu Generation and Distribution  
Corporation Ltd.  
Coimbatore Distribution Circle (South)  
Coimbatore.

4. The Superintending Engineer  
Tamil Nadu Generation and Distribution  
Corporation Ltd.  
Tirunelveli Distribution Circle  
Tirunelveli.

....Respondents  
(Thiru M.Gopinathan  
Standing Counsel for the Respondents)

**Dates of hearing :** 04-10-2013; 18-10-2013; 28-04-2014;  
14-07-2014; 30-07-2019; 20-08-2019;  
01-10-2019;12-11-2019 and 17-12-2019

**Date of order :** 21-07-2020

The D.R.P.No.29 of 2013 came up for final hearing before the Commission on 17-12-2019 and the Commission upon perusing the petition and connected records and after hearing the submissions of both sides passes the following:-

**ORDER**

**1. Prayer in D.R.P. No. 29 of 2013:-**

The prayer of the petitioner in this D.R.P.No.29of 2013 is to direct the Respondents to

- (a) pay interest of Rs.20,16,669/- for the belated payment for supply of electricity for WEG HT SC No.3145 and WEG HT SC No.3303 representing interest at 12% rate after 30 days from the date of invoice till date of payment for the period of supply from October 2010 to November 2012;
- (b) pay interest of Rs.28,14,430/- pertaining to belated payment for encashment of un-utilised banking energy after 7 days from the date of invoice till payment representing interest at 18% for the period 2008-2009, 2009-2010, 2010-2011 and 2011-2012; and

(c) pay cost of the petition

and any other order or direction deemed fit under the circumstances of the case.

## 2. Facts of the Case:-

The petition is filed to claim interest on the belated payment for the supply of electricity unutilized units by wind mill generator to Tamil Nadu Generation and Distribution Corporation and the Tamil Nadu Transmission and Distribution Corporation and encashment of banked energy.

## 3. Contentions of the Petitioner:-

3.1. The petitioner is a registered partnership concern having Spinning Mill at Mathakadi Thottam, S.F. 154/1, Pallapalayam Post, Irugur (via), Coimbatore – 641 103 within the area of jurisdiction of third respondent with HT SC No. 245 for the Spinning Mill.

3.2. The petitioner own five wind mills erected for their use of the factory and sell the balance to the respondents. The details of wind mills are as follows:-

Sl. No.	WEG HT SC	Place	Superintending Engineer	Agreement
1	3144	Keelveeranam Village at Tirunelveli District	Superintending Engineer, Tirunelveli Electricity Distribution Circle	Energy agreement 29-03-2010 Wheeling dated
2	3145	Keelveeranam Village at Tirunelveli District	Superintending Engineer, Tirunelveli Electricity Distribution Circle	Energy Agreement 15-09-2010 Energy agreement 29-03-2010 Purchase dated Wheeling dated
3	3303	Keelveeranam	Superintending	Energy Purchase

		Village at Tirunelveli District	Engineer, Electricity Circle	Tirunelveli Distribution	Agreement dated 22-09-2010
4	1826	Kidarakulam Village, Tirunelveli	Superintending Engineer, Electricity Circle	Tirunelveli Distribution	Energy Wheeling Agreement dated 26-03- 2009
5	364	Selakkarachel Village, Palladam Taluk, Coimbatore	Superintending Engineer, Electricity Circle (South)	Coimbatore Distribution	Energy Wheeling Agreement dated 06-03- 2009

3.3. The petitioner entered into necessary Wind Energy Purchase Agreement and Energy Wheeling Agreement with the Respondents, thereby the petitioner do adjust the wind generation, bank the requisite energy, sell the excess generation as well as encash the unutilized banking energy.

3.4. For the period from October 2010 to November 2012, the petitioner supplied / sold the wind energy to the respondents. The invoices for supply / sale of wind energy were paid by the respondents but with much delay inspite of various reminders. The particulars of invoices amount due, interest etc. are given along with statement dated 20-06-2013.

3.5. The statement enclosed letter dated 20-06-2012 for the delay varying from 506 to 175 days connected with supply for October 2010 to November 2012, petitioner is entitled to interest at 12% of Rs.22,14,807/- connected with WEG HT SC Nos.3145 and 3303.

3.6. The Wind Energy Purchase Agreement dated 15-09-2010 for WEG HT SC No.3145 as well as Wind Energy Purchase Agreement dated 22-09-2010 WEG HT

SC No.3303 contemplate interest at 1% per month for any delayed payment beyond 30 days in clause 6 (2) of billing and payment.

3.7. The petitioner sent the reminder letter dated 20-06-2013 claiming interest at 12% for Rs.22,14,807/- for the period of supply from October 2010 to November 2012 from WEG HT SC Nos.3145 and 3303. So far no response.

3.8. The non-payment of interest by the respondents for delayed payment on purchase of generated energy from petitioner is contrary to clause 6 of Wind Energy Purchase Agreement. The said clause contemplates that the Wind Energy Generators shall raise bill in the respective months for sale of energy to the Distribution Licensee and the Distribution Licensee shall make the payment within 30 days of receipt of the bill. Further, it is contemplated that belated payment beyond 30 days is liable for interest at 1% per month.

3.9. The respective clause of agreement is as follows:-

*“6. Billing and Payment:-*

- (1) The Wind Energy Generator shall raise a bill every month for the net energy sold after deducting the charges for start-up power and reactive power.*
- (2) The Distribution Licensee shall make payment to the generator within 30 days of receipt of the bill. Any delayed payment beyond 30 days is liable for interest at the rate of 1% per month.”*

3.10. The respondents have also violated the Wind Energy Tariff Order in Tariff Order No.1 of 2009 dated 20-03-2009, wherein para 8.11.1 directs the Distribution

Licensee to pay interest for the delayed payment beyond 30 days from the date of receipt of bill.

3.11. The relevant para reads as follows:-

*“8.11.1. When a wind generator sells power to the distribution licensee, the generator shall raise a bill every month for the net energy sold after deducting the charges for startup power and reactive power. The distribution licensee shall make payment to the generator within 30 days of receipt of the bill. Any delayed payment beyond 30 days is liable for interest at the rate of 1% per month.”*

3.12. In D.R.P. No.9 and 10 of 2012 dated 28-03-2013, this Commission has followed Appellate Tribunal's Order in Appeal No.11 of 2012 dated 17-04-2012 wherein it is stated that Wind Power Generators are entitled for payment of interest on delayed payment made by the respondents for purchase of power from the generators.

3.13. Initially, they claimed interest from the date of invoice. However, in view of comprehensive Tariff Order on Wind Energy Order No.1 of 2009 restricts the claim beyond 30 days from the date of invoice. Hence, the reduced calculation, deducting interest is for the first 30 days.

3.14. The interest claim 12% is originally from date of invoice as per letter dated 20-06-2013. Now petitioner is restricting the claim of interest for the period after 30 days of date of invoice, thereby claiming Rs.20,16,669/- only.

3.15. Every year after consumption of self-generated energy through wind mills, the excess units are banked in the account maintained by the respondents. As per para 8.2 of Comprehensive Tariff Order on Wind Energy Order No.1 of 2009 dated 20-03-2009, in the end of the financial year, the petitioner can encash at the rate of 100% of un-utilised banked energy.

3.16. The petitioner claimed interest of Rs.1,43,298/- dated 22-06-2013 at 18% regarding banked energy encashment and payment for the banked energy after delay regarding banking before 31-03-2010.

3.17. The petitioner also raised invoice dated 16-04-2013 for the claim of interest of Rs.14,22,966/- calculated at 12% for the year 2010-2011 for the belated payment for banking units. The petitioner also sent remainder letter dated 20-06-2013 claiming payment of interest of Rs.14,22,966/-. At 18% rate of interest after 7 days of invoice, the correct amount of interest, petitioner is entitled for Rs.21,13,813/- for the year 2010-2011.

3.18. The petitioner also claimed interest at the rate of 1% per month for the belated payment of banking encashment vide letter dated 16-04-2013 regarding bill dated 05-04-2012 for delay of 373 days for the year ending 2011-2012 a sum of

Rs.3,92,845/-. At 18% rate of interest after 7 days of invoice, the correct amount of interest, the petitioner is entitled for Rs.5,78,209/- for the year 2011-2012.

3.19. In M.P. No. 17 of 2009 and D.R.P. No.15 of 2009 dated 03-12-2009, the Commission held that for delay in payment of un-utilized banked units, TNEB could be liable to pay interest at the rate it charges its consumers for delayed payments namely 18%.

3.20. The petitioner at present is claiming interest connected with belated payment regarding encashment of banking energy as follows:-

Sl. No.	Date	Claiming of interest for the period	Revised interest amount at 18%
1	22-06-2013	2008-2009 and 2009-2010	Rs.1,22,408/-
2	16-04-2013	2010-2011	Rs.21,13,813/-
3	16-04-2013	2011-2012	Rs. 5,78,209/-

Total interest of claim regarding banking encashment

for which delayed payment = Rs.28,14,430/-

#### **4. Contentions of the Respondents in affidavit 23-01-2014:-**

4.1. The petitioner has entered into Energy Purchase Agreement (EPA) with TANGEDCO on 15-09-2010 and 22-09-2010 in line with the provisions of Order No.1 dated 20-03-2009 issued by this Commission for sale of wind energy to TANGEDCO from their WEG HT SC No. 3145 and WEG HT SC No. 3303 respectively. The wind Energy Generator No. 3145 was commissioned on

29.03.2010 and the wind Energy Generator No. 3303 was commissioned on 22.09.2010.

4.2. During December 2013, Respondent released payment of bills pertaining to all the wind energy generators for the period upto September 2013.

4.3. Due to financial constraints underwent by the Respondent / TANGEDCO, it was unable to meet its financial commitments in time. Due to the losses incurred by the Respondent Corporation, over a period of many years, the Respondent's credit rating had deteriorated resulting in difficulty in raising funds by way of loans also. The delay in making payments by the Respondent was due to financial constraint in the recent years and the said non-payment of dues is not intentional much less any criminal breach of trust as alleged by the petitioner.

4.4. The Respondent managed to make payments upto September 2013 bills to Wind Energy Generators during December 2013. The above payments made clearly indicate the bona-fide intention of the Respondents to repay the outstanding dues to the Wind Energy Generators. The Respondent does not deny its payment obligations to the petitioner as per the order of the Commission.

4.5. The Respondent has huge outstanding payments to the tune of Rs.4000crores to several generators and coal Companies also. Even the loan repayments and interest payments could not be made on the due dates due to the

financial crisis of the Respondent. During the year 2012-13, average outstanding bills to power generators, suppliers and contractors, coal etc. was in the range of Rs.11000.00 crores. This amount has been brought down to Rs.4000 crores as on 31.10.2013 due to Ways & Means Advance from GoTN, advance release of subsidy, transitional loan from REC/PFC, funds from TNPFC through bond issue. These receipts have not only helped TANGEDCO in clearing the accumulated bills, but also in clearing the current bills so that there is no further accumulation of bills.

4.6. The Respondent had been putting all its best efforts to mobilize funds with the help of the Government of Tamil Nadu. The respondent, with the concurrence and support of the State Government has become the first Discom in the country to successfully implement the Financial Restructuring Plan announced by the Government of India. As per the Financial Restructuring Plan, the GoTN has to take over 50% of the Bank loans of TANGEDCO as on 30.09.2013. The balance loans are to be restructured by banks with a moratorium of 3 years. Further the scheme mandates funding of loss by banks to the tune of 100%, 75% and 50% during the FYs 2012-13, 2013-14 and 2014-15 respectively. More than 85% of the cash loss funding loan for the year 2012-13 has been released by the banks.

4.7. The respondent is also taking all efforts to improve the power situation of the State which will help in improving the revenue realization from the consumers. The power position is improving due to operation of new plants at NCTPS (2 X 600 MW), MTPS (600 MW) and Joint Venture Projects with NTPC (2 X 500 MW). The

third unit of JV project with NTPC (500 MW) and 2 units of JV project with NLC (2 x 500 MW) are expected to put into operation before March 2014 resulting in additional revenue realization. This situation would definitely prove beneficial to the Respondent to clear its outstanding bills in the forthcoming months.

4.8. Due to improvement in power position, TANGEDCO has enhanced the quota from 60% to 80% to HT consumers. The Respondent is committed to meet its payment obligations and is taking appropriate steps to revive its financial strength. This may result in timely payment of power dues avoiding interest in future.

4.9. The petitioner has entered into Energy Wheeling Agreements (EWA) with TANGEDCO as detailed below:-

S.C. No.	Date of Agreement	Date of Commission
364	06-03-2009	21-03-2005
1826	26-03-2009	31-03-2006
3144	29-03-2010	29-03-2010
3145	29-03-2010	29-03-2010

4.10. None of the Energy Wheeling Agreements (EWA) entered into between the petitioners and TANGEDCO (erstwhile TNEB) specifically provides for payment of interest on delayed payments.

4.11. The petitioner has cited the Commission's Order dated 03.12.2009 in M.P. No. 17 of 2009 and D.R.P. No.15 of 2009. The petitioner has claimed interest on delayed payments for unutilized banked energy at 18% or delay beyond 7 days

from the date of billing. The Commission's order dated 03-12-2009 in respect of M.P.No. 17 of 2009 and D.R.P. No.15 of 2009 is as follows:-

*“The TNEB shall make payment within 60 days of the claim, failing which, the TNEB will be liable to pay interest at the rate it charges its consumers for delayed payments, namely, 18%”*

The above order is limited to the interest payment for encashment of unutilized banked units as on 30-04-2009.

4.12. The sub-clause 15 of clause 16 of the Commission's Suo-Motu Proceedings No.1 of 2009 dated 28-10-2009 reads as under:-

*Energy which remains unutilized as on 31-03-2010 shall be eligible for encashment at the rate prescribed in para 8.2.2. of Order No.1 of 2009 dated 20-03-2009 of TNERC”*

4.13. The above order does not provide for payment of interest on delayed payments towards unutilized bank energy. The interest claims of the petitioner for the unutilized banked energy for the period beyond 30-04-2009 is not maintainable under law.

## **5. Rejoinder filed by the Petitioner on 16-06-2014:-**

5.1. The clause 6(2) of wind energy Power Purchase Agreement at WEG HT SC No. 3145 and 3303 is as follows:

*“The distribution licensee shall make payment to the generator within 30 days of receipt of the bill. Any delayed payment beyond 30 days is liable for interest at the rate of 1% per month”.*

5.2. The Wind Energy Purchase Agreement dated 15.9.2010 for WEG HTSC No. 3145 entered is admitted. Similarly Wind Energy Purchase Agreement dated 22.9.2010 for WEG HT SC No. 3303 is admitted. The commissioning dates mentioned in para 3 of the counter are also correct.

5.3. It is admitted that respondents paid the cost of wind energy sold but there was huge delay in payment.

5.4. Para five, six and seven of the counter, it is submitted that the contract terms and the Electricity Regulatory Commission's order are binding on the respondents. The loss or subsidy to other are not the issue. Taking all factors into account as per Electricity Act, 2003, the Power Purchase Agreement are made, Electricity Regulatory Commission orders are passed regarding delay in payment, the same would be binding on the respondents. The Respondents are duty bound to pay for the purchased power.

5.5. In Appeal No. 11 of 2012 order dated 17.4.2012, the Hon'ble Appellate Tribunal for Electricity at para 11 observed as follows:

*“Therefore, the Appellant is bound to pay within the same period as provided to HT consumers. It has not paid within time. It ought to pay interest on delayed payment. If it is claimed that the Board is not liable to pay the*

*interest on delayed payment, there will be no sanctity of clause 5(b) of the Agreement imposing the time frame for payment. Therefore, the Appellants cannot claim for an exemption on payment of interest on admitted delayed payments, especially when the Board is entitled for the same from consumers.”*

5.6. It is erroneous to state that Energy Wheeling agreements do not contemplate payment of interest for delayed payment. The Hon'ble Appellate Tribunal in Appeal No. 11/2012 dated 17.4.2012 at para 16 concluded the issue as follows:

"16 In the present case, even though there is no express stipulation with regard to the interest, as pointed out by the Commission, the Commission has invoked the powers, as provided in the relevant sections of CPC to order the same. In the light of the various principles regarding the grant of interest laid down by the Hon'ble Supreme Court in the case of Secretary, Irrigation Department, Government of Orissa Vs. G.C. Roy reported in 1992 Vi1.1 SCC 508, the Respondent Wind Power Generators are entitled to receive interest on the admitted delayed payment.”

5.7. The Commission in its order dated 03-12-2009 in M.P. No.17 of 2009 and D.R.P. No. 15 of 2009 concluded that TNEB liable to pay interest at the rate it charges its consumers for delayed payment, namely, 18% if not paid in 60 days day of claim.

5.8. The Respondents are liable to pay 18% of interest on the belated payment for encashment of unutilised banking energy after 7 days from the date of invoice till payment for the period from 2008-2009, 2009-10, 2010-11 and 2011-12 as per the claim in petitioner statement.

## **6. Findings of the Commission:-**

6.1. This D.R.P. has been filed with a prayer to direct the respondent to pay interest of Rs.20,16,669/- for the belated payment for supply of electricity for WEG HT SC No.3145 and 3303 calculated at 12% interest after 30 days from the date of invoice till date of payment for the period of supply from October 2010 to November 2012 and to direct the respondent to pay interest of Rs.28,14,430/- pertaining to belated payment for encashment of unutilised banking energy after 7 days from the date of invoice calculated at 18% for the period 2008-2019; 2009-2010; 2010-2011 and 2011-2012. The petitioner has also prayed to award cost of the petition.

6.2. It is not necessary to deal with all the averments in the pleadings submitted by the parties as the issue lies in a narrow compass. The sole question which arises for consideration is whether interest is payable on the delayed payment and if so at what rate. One of the prayers of the petitioner is that the respondent be directed to pay interest for the belated payment of supply of electricity from WEG HTSC No.3145 and 3303. Clause 6 of the Energy Purchase Agreement relating to the said WEGs provides as follows:-

*“6. Billing and Payment:-*

- (1) *The Wind Energy Generator shall raise a bill every month for the net energy sold after deducting the charges for start up power and reactive power.*
- (2) *The Distribution Licensee shall make payment to the generator within 30 days of receipt of the bill. Any delayed payment beyond 30 days is liable for interest at the rate of 1% per month.”*

6.3. From the above, it is clear that the contract between the petitioner and the respondent provides for payment of 1% interest per month for delayed payment beyond 30 days of receipt of bill. Since the respondent TANGEDCO has not denied its liability to pay the interest amount and in fact paid the invoice amount belatedly we hold that interest at 1% per month as provided in the EPA is payable by the respondent for the delayed payment of invoice amount for supply of electricity from WEGs HTSC Nos. 3145 and 3303.

6.4. The next question which arises for consideration is regarding the rate of interest payable for the belated payment for engagement of unutilized banking energy after 7 days from the date of invoice. In this connection, attention has been invited to the earlier orders of this Commission dated 03-12-2009 in M.P. No.17 of 2009 wherein 18% interest was ordered for delay in settlement of invoices beyond the 60 days in regard to the encashment of unutilized banking energy.

6.5. However, the said order of this Commission cannot be applied in this case, since the issue of payment of interest subsequently attained finality before the Supreme Court in Review Petition (Civil) No.1606 of 2018 in Appeal No. 5465 of

2014 dated 16-08-2018 in the matter of CFC Vs. Gangadhar Narasingadhas Agarwal wherein the Hon'ble Supreme Court affirmed the judgment dated 17-04-2012 of APTEL in Appeal No.11 of 2012 which ordered payment of interest at the rate of 10% on delayed payment.

6.6. The above said case is one where there was no clause in the PPA with regard to interest and the issue was decided on the principle of equity. Thus, there is no ambiguity on the point that interest is payable even when there is no clause to that effect in the PPA. Applying the above said principle in the instant case, the Commission holds that interest at 10% for delayed payment for the encashment of unutilized banking energy after 7 days from the date of invoice is payable in this case.

6.7. In the result, the Commission directs the respondent to pay 12% of interest after 30 days from the date of invoice for the belated payment for supply of electricity from WEG HT SC No.3146 and interest @ 10% for belated payment for encashment of unutilized banking energy after 7 days from the date of invoice. TANGEDCO is directed to re-work the calculations with regard to settlement of dues as allowed in the proceeding para and make payment accordingly within three months from the date of this order. In the circumstances, there will be no order as to the costs.

(Sd.....)  
**(K.Venkatasamy)**  
**Member (Legal)**

(Sd.....)  
**(Dr.T.Prabhakara Rao)**  
**Member**  
/True Copy /

(Sd.....)  
**(M.Chandrasekar)**  
**Chairman**

Secretary  
Tamil Nadu Electricity  
Regulatory Commission